IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

WEDNESDAY, THE 17TH OCTOBER 2007 / 25TH ASWINA 1929

WP(C).No. 10902 of 2006(W)

PETITIONER:

MURALI ALIAS DHANANJAYAN,
KALATHIL, CHERTHALA NORTH VILLAGE,
CHERTHALA NORTH MURI.

BY ADV. SRI.K.G.PAVITHRAN

RESPONDENTS:

STATE OF KERALA,
REP. BY THE SPECIAL TAHSILDAR (LA),
RAILWAY,
ALAPPUZHA.

BY SR. GOVERNMENT PLEADER SRI. V.T.K. MOHANAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 17/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C) NO: 10902/2006 W

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1. COPY OF THE JUDGMENT DT. 2/08/01 IN LAR NO. 23/97 ON THE FILE OF THE SUB COURT, CHERTHALA.

EXT.P2. COPY OF THE AFFIDAVIT FILED BY THE PETITIONER DT. 20/2/2004.

EXT.P2A. COPY OF THE RESTORATION PETITION FILED BY THE PETITIONER DT. 20/2/2004.

EXT.P3. COPY OF THE ORDER IN IA NO. 263/2004 IN LAR NO. 23/97 ON THE FILE OF THE SUB JUDGE, CHERTHALA, AND DT. 5/12/2005.

EXT.P4. COPY OF THE JUDGMENT IN LAR NO. 22/97 ON THE FILE OF THE SUB JUDGE, CHERTHALA DT. 14/1/2003.

RESPONDENT'S EXHIBITS NIL.

True copy

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M.N. KRISHNAN, J.

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W.P.C. NO. 10902 OF 2006

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Dated this the 17th day of October, 2007.

J U D G M E N T

This writ petition is filed seeking to set aside Exts.P1 to P3 orders passed by the Subordinate Judge, Cherthala in LAR 23/97. The Sub Court passed a judgment as follows.

> "Claimant have no vakalath. The counsel who represent has no vakalath. Hence, it is found that the amount fixed is adequate. Hence, reference is answered accordingly."

To add further confusion the claimant himself filed an application for restoration under Order 9 Rule 9 CPC. The Apex Court as well as this Court in very many decisions held that the Land Acquisition Court has no power to dismiss a case for default. Therefore, there is no question of invoking Order 9 Rule 9 CPC in such a case. The Apex Court has also considered the matter and held that the Courts have to apply their mind while disposing of Land Acquisition references and find out whether adequate compensation can

be awarded. Even in the absence of a claim it is an imperative duty of the Court to satisfy its conscience regarding the amount that is awarded. Unfortunately, the Court below has not applied its mind at all and instead of using the words 'dismissal for default' had disposed of the case as 'reference is answered accordingly'. So, this requires correction under Article 227 of the Constitution of India and therefore I set aside the judgment passed by the Subordinate Judge, Cherthala in LAR 23/97, restore it to file and direct the learned Subordinate Judge to dispose of the matter after affording opportunities to the claimant as well as the Government to adduce evidence in support of their respective contentions and dispose it of in accordance with law. I also direct the learned Sub Judge to consider whether there has been such gross negligence on the part of the claimant so as to deprive him of interest during the period, i.e., from 2.8.01 to till this date. Parties are directed to appear before the Court below on 20.11.07. Being a 1997

matter, the Land Acquisition Court is directed to bestow its best attention and try to dispose it of within three months from the date of first appearance of the parties.

The writ petition is disposed of accordingly.

M.N. KRISHNAN, JUDGE.

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